



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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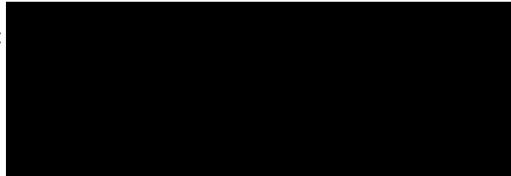
File: LIN 00 053 53536 Office: Nebraska Service Center Date: 07 JAN 2002

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a full service upholstery, rug and carpet cleaning franchise. It seeks to employ the beneficiary as a marketing and sales manager for a period of three years. The director determined the petitioner had not established that the job offered qualifies as a specialty occupation.

On appeal, counsel argues that the offered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

Counsel argues that this petition should be approved in view of the approval of other petitions in the past. This Service is not required to approve applications or petitions where eligibility has not been demonstrated. The cases cited by counsel have no precedential effect in this proceeding. See: 8 C.F.R. 103.3(c).

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

On appeal, counsel states that the Dictionary of Occupational Titles (DOT) issued by the Department of Labor (DOL) indicates that the education and training level of the position is SVP 8, which signifies the complexity of the position.

The latest edition of DOL's DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by DOL in the various editions of the Occupational Outlook Handbook (Handbook). The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

An educational evaluation report provided for the record equates the beneficiary's education received in England as being the equivalent to a Master of Business Administration degree and Bachelor of Arts in International Relations degree as awarded by an accredited U.S. university.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty,

or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The duties of the offered position are listed as:

The Sales and Marketing Manager will help launch sales and marketing campaigns to accommodate the goals of our company.

The Marketing and Sales Manager will be responsible for increasing our sales in the St. Louis area. The position involves managing and directing current sales and marketing activities as well as developing new sales and marketing strategies to improve sales at this branch.

The position will include coordinating sales distribution by establishing sales territories, forecasts and goals. The position will also involve a detailed analysis of sales statistics in order to formulate policies. The Sales and Marketing Manager will be responsible for reviewing the market analyses to determine customer needs, volume potential and price schedules in this industry.

The position requires providing upper management with current information regarding market conditions and barriers to entry in specific markets. In addition, the position involves making formal presentations regarding our company and representing our company while liaising directly with our clients.

The Manager will report to other management departments regarding future budget and expenditure requirements for marketing and sales in his/her specific area. This position requires the ability to work independently and the ability to manage multiple projects at the same time. In addition, we look for familiarization of marketing concepts, as well as strong quantitative and analytical skills.

Counsel submits two letters from professors at United States universities and a number of advertisements from various media in the St. Louis, Missouri area to support the argument that similar positions offered by other firms require either a bachelor's degree or equivalent experience. The letters from the professors assert that a bachelor's degree is required for the position. However, no evidence to support this assertion is forthcoming. It is noted that the majority of the advertisements submitted by the petitioner are for positions other than sales and marketing manager jobs. The small number of marketing advertisements forwarded indicate that a baccalaureate in a wide variety of disciplines ranging from a degree in any field, chemistry, chemical engineering, materials science, communications, English, Journalism or marketing would qualify an individual for these marketing positions. These advertisements do not substantiate a finding that a sales or marketing position would require the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation.

In these proceedings, the duties of the position are dispositive and not the job title. The offered position combines the duties of a general manager or executive with those of a marketing manager. In its Occupational Outlook Handbook (Handbook), 2000-2001 edition, at pages 50-51, the Department of Labor does not state that a baccalaureate or higher degree in a specialized area is required for employment as a general manager or executive. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in company training programs are often considered as important as a specific formal academic background.

The Handbook at pages 25-26 also lists no requirement of a baccalaureate degree in a specialized area for employment as a marketing manager. A wide range of educational backgrounds are considered suitable for entry into marketing managerial positions. Some employers prefer degrees in business administration but bachelor's degrees in various liberal arts fields are also acceptable. Here again, certain personal qualities and participation in company training programs are often considered as significant as the beneficiary's specific educational background. It is concluded that the petitioner has not demonstrated that the

offered position is a specialty occupation within the meaning of the regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.